

1684. *January.* ROBERT PATERSON *against* Mr GEORGE JOLLY.

A DECRET of the English judges, *in foro*, being suspended upon iniquity, for their repelling this defence, That the summons which should have been executed upon twenty-one days, were executed upon fifteen days;—Alleged for the charger, That the decret not being reviewed within year and day, it could not be quarrelled but upon such grounds as a decret of the Lords is quarrellable; and their decret is not quarrellable upon iniquity. Answered, Though decreets of the English judges could only be quarrelled within year and day for want of authority, they are quarrellable after year and day as other decreets, by the ordinary remedy of suspension and reduction, upon relevant grounds: And, whatever might be said as to doubtful grounds of iniquity, yet, to repel a defence warranted by an express Act of Parliament, *viz.* that summons should be executed in twenty-one days, cannot be justified: for that is *judicare de legibus*, and not *secundum leges*. The Lords differed much in opinion, if this ground of iniquity was to be sustained against the judges' decret: but,—it having appeared from inspection of the decret, that the defence was repelled upon this relevant reply, That the libel was proven, *scripto*, by instructions given out therewith *ab initio*,—the point debated was waved, and the decret sustained.

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1684. *January.* GOSFOORD *against* LORD BARGENY.

FOUND that one pursuing a trustee, to denude himself of the trust, was obliged to refund to the defender the expenses he was at in establishing and enabling himself to transmit the right, and also to relieve him of non-entries, ward, &c. to which he might be liable by reason of the trust, albeit the pursuer was a singular successor to the granter of the trust.

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1683, *March*; and 1684, *February.* RAPLOCH *against* BAILIE HALL.

RAPLOCH, being incarcerated for £1200, raised suspension upon this reason, That the bond, being signed blank for borrowed money, for the behoof of his son Samuel, and delivered to him, thereafter the suspender got Monkland to advance the money; and Samuel pretending he had not the bond in town, gave a discharge on't before the charger, Bailie Hall, had intimated his right to the blank-bond;—Answered for the charger, That his name being filled up, *non constat* if it was delivered to him in blank, it being usual for debtors to take bonds in their creditors' name, and Samuel was debtor to the charger in £800; 2. Samuel could never have been designed to be creditor; for he and the writer are the only two witnesses. The Lords ordained Bailie Hall and James Edmiston the writer, to be examined if the bond was blank *ab initio*, and if it was not delivered to the Bailie by Samuel. And they deponed, that it was signed